VPH

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

CIVIL APPLICATION No. 4950 OF 2006
IN
FIRST APPEAL No. 283 OF 2005

Office notes, office memoranda of coram, appearances, Court's orders directions & Registrar's orders	:	Court's or Judge's order

Mr. A. A. Kumbhkoni i/b J. A. Sarkhot, advocate for the applicant.

Mr. V. G. Mujumdar, advocate for respondent No.2.

Mr. S. A. Bhagwat, advocate for respondent No.6.

CORAM: J. N. PATEL,
AND
A. A. SAYED, JJ.

DATE : APRIL 17, 2007.

P.C.:

. Applicant/original plaintiff has moved this application for seeking amendment in the plaint and other ancillary relief like

appointment of court receiver and for expeditious hearing of the first appeal. The suit of the applicant was dismissed by the trial court. Against the said order, applicant has preferred appeal, which is admitted. Before the appellate court, appellant moved an application for seeking direction from this court to direct the respondents to deposit rent which original defendant / respondent is recovering from their tenant, Bank of Maharashtra. The said application came to be rejected by this court on the ground that as there is no relation of landlord and tenant between appellant and respondent, appellant cannot claim rent, which has given

cause for filing this application.

2. Mr. Kumbhkoni, learned counsel appearing for the appellant submitted that the amendment sought is only to correct the terminology of rent "to use and occupation charges and in no way it changes the nature of suit or cause any prejudice to the respondent. It is submitted that the amendment is required to be sought in the appeal, due to the mis-description of the claim of mesne profits as rent, and therefore, the same may be allowed. It is further submitted that the respondents are reaping the fruits of his property, and therefore, in order to preserve the property, this

court may appoint court receiver of High Court, as receiver of the property, so as to secure interest of the party and further the appeal be taken up for expeditious hearing.

3. The learned counsel for the respondent strongly objects for the reliefs sought in the application. It is submitted that such an application is not maintainable for the reason that diverse reliefs have been sought in one application without any justification.

4. It is further submitted that the amendment sought is belated and after the plaintiff’s suit came to be dismissed such amendment

should not be permitted. It is further submitted that it prejudices the case of the respondent, as after this court held that the applicant is not entitled to claim rent, now applicant seeks to amend the word "rent" and substitute to it "use and occupation charges" has rather contrary is his claim for rent which has also been turned down by this court and thus, it is an afterthought and was not part of original relief claimed by the applicant in his suit.

5. In so far as the appointment of receiver is concerned, it is submitted that the plaintiff’s suit having been dismissed, there is no question of

appointment of receiver and the respondent (being owner of the premises), having been put in possession of the premises after the appellant received consideration. These principles are well settled under section 53-A of the Transfer of Property Act and he is entitled to reap the benefits of the suit property.

6. In respect of expeditious hearing, he fairly submitted that, for that he cannot have any objection.

7. We find that in so far as amendment is concerned, as sought for, by the appellant/original plaintiff it is rightly submitted by

the learned counsel appearing for appellant that it in no way changes the nature of the suit or cause prejudice to the respondent/ original defendant, and therefore, the same can be allowed, but subject to cost, as amendment is sought at the stage of appeal, therefore, we allow the application to the extent of prayer clause (b), subject to cost of Rs.5,000/-, which shall be a pre-condition, cost to be paid to the respondent no.1, within 2 weeks. In case cost is not paid, the relief granted by this court permitting the appellant to amend, stand recalled.

8. As regards the prayer of appellant for appointment

of court receiver and expeditious hearing of the suit, we do not find any merits in the matter, as there is no allegation of the suit property being alienated or wasted. In so far as hearing of the appeal is concerned, appeal would be taken up in due course, as no exceptional ground has been made to expedite hearing. The application stand disposed of accordingly.

[A. A. SAYED, J.] **[J. N. PATEL, J.]**